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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,989	09/12/2003	Jerry W. Rodgers	POW5381.01A2	6096
8156	7590	11/02/2006		
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			EXAMINER BRADEN, SHAWN M	
			ART UNIT 3781	PAPER NUMBER

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/660,989

Applicant(s)

RODGERS ET AL.

Examiner

Shawn M. Braden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 6,8,19,26 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-18,20 and 35 is/are allowed.
- 6) ☒ Claim(s) 1-3,12,13,21-23,32 and 33 is/are rejected.
- 7) ☒ Claim(s) 4,5,7,9-11,14,24,25,27 and 29-31,34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3,12,13 ,21-23 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohm (USPN 6,520,104) in view of McGarvey (USPN 4,989,750), Dodson (USPN 5,960,981) and Legare (USPN 6,686,003). Bohm clearly shows a base tank for storing flammable and combustible liquids and supporting a generator (fig 1), Bohm also shows an interstitial space defined between the walls of the outer tank and the inner tank (fig 5).

Bohm lacks a plurality of planar baffles coupling opposing side walls, Bohm also lacks fire resistant material disposed on the outside of outer tank, Bohm also lacks a fire resistant solution disposed in the interstitial space wherein the fire resistant solution remains liquid and is removable from said interstitial space in liquid form.

Dodson teaches a tank baffle aiding in the structural strength of a vehicle tank. McGarvey teaches fire resistant material disposed on the outside of outer tank to improve safety 243. McGarvey also teaches fire resistant solution disposed in the interstitial space for improved safety 221a,221b,221c. Fire resistant solution is injected in liquid form then solidifies. Legare teaches a liquid fire resistant solution of water

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glass and a hydrated salt (high temperature silicate gel)(46) that remains liquid and is removable in liquid form, Legare uses this gel over foam to keep contents of container below 125 degrees F during a fire in order to keep contents inside from burning (col. 1 ln. 20-30). All of the above prior art references are from the same field of endeavor being high performance fire resistant containers.

Therefore it would have been obvious to one of ordinary skill at the time of the invention was made to add Dodson's baffles to Bohm's tank to in order to increase structural strength. Also, it would have been obvious to one of ordinary skill at the time of the invention was made to add McGarvey's fire resistant material on the outside of outer tank and to add Legare's fire resistant solution in the interstitial space to lower the risk of fire or an explosion.

3. With respect to claims 2,3,22,23 Bohm does not specifically disclose the thickness of his material. McGarvey discloses steel walls that are about 10 gauge (1/8-1/4 in thick) (Col 2 ln 60-65). That would include inner tank wall of at least about 1/4 inch and an outer wall thickness of at least about 1/4 inch. In regards to the 316 stainless steel.

It was well know in the art that 316 stainless steel has good corrosion resistance, workability and great strength. Therefore it would have been obvious to one of ordinary skill at the time of the invention was made to modify Bohm's tank with the stainless steel walls of McGarvey in order to have a strong corrosion resistant tank. Furthermore for supporting evidence Hayward (USPN 6,874,284) teaches using stainless steel in the same field of endeavor (col. 2 ln. 22).

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4. Regarding claims 13 and 33, Bohm does not show a fire resistant fiberglass mesh, McGarvey teaches glass fiber walls, are reinforced walls, resin impregnated. He teaches fiberglass walls for lightweight tank construction (col2 ln60-64). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add a fiber glass mesh coated with an intumescent paint to Bohm's tank to lower the overall weight of the container in order to improve portability.

5. Claims 12,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohm, McGarvey and Dodson and Legare as applied to claim 1 above, and further in view of Neuscheler (USPN 3,995,168). Bohm, McGarvey, Dodson and Legare disclose everything, as discussed above, except a water detector. Neuscheler teaches a device to provide a warning signal when an unexpected fluid is present in the tank thereby protecting against situation where water is inadvertently placed or accumulates above a normal amount in an engine fuel tank (col1 ln58-63). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add a water detector such as Neuscheler to Bohm's tank in order to avoid running water contaminated fuel in the accompanying engine.

***Allowable Subject Matter***

6. Claims 4,5,7,9-11,14,24-25,27,29-31,34 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 15-18,20 and 35 are allowed.

***Response to Arguments***

8. Applicant's arguments filed 08/18/2006 have been fully considered but they are not persuasive. In response to applicant's first argument, "there is no teaching, motivation or suggestion to use a fire resistant solution that remains liquid in Legare". Examiner refers to (col. 3 ln. 1) the silicate gel is actually an unfired ceramic which solidifies and toughens after being fired. Therefor the gel is a considered a liquid and removable to the same claimed extent as applicants liquid before the event of a fire. Further, applicant's fire resistant gel is not removable after a fire. Further applicant's claim has no reference to before or after a fire.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the solution as taught by Legare is better at protecting the contents of the container against fire.

10. In response to applicant's next argument, "The proposed modification would render Legare unsuitable for its primary purpose". Examiner states, Legare was not the base reference in the rejection. Legare was used by the examiner to teach using a fire resistant solution that that remains a liquid. Examiner also would like to restate that Legare's silicate gel is a liquid, and is removable for the interstitial space in liquid form.

11. In response to the next argument, "the examiner has not established a suggestion or motivation to use type 316 stainless steel". Examiner has addressed this argument with further supporting evidence in the office action.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**

smb